

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	
Opportunities of Spectrum Through Incentive	)	GN Docket No. 12-268
Auctions	)	
	)	
Incentive Auction Task Force and Media	)	MB Docket No. 16-306
Bureau Seek Comment On Post- Incentive	)	
Auction Transition Scheduling Plan	)	

**COMMENTS OF OTA BROADCASTING, LLC**

OTA Broadcasting, LLC (“OTA”) respectfully submits these comments in response to the Public Notice issued by the FCC’s Incentive Auction Task Force and Media Bureau on September 30, 2016 regarding the post-auction transition scheduling plan (the “Transition Schedule PN”).<sup>1</sup> As explained in greater detail below, as a supplement to whatever transition schedule it ultimately adopts, the Commission should not only permit, but encourage, voluntary transitional channel sharing as a means for broadcasters to vacate their pre-auction channels at any point in the transition process without disrupting their operations or placing their licenses at risk. OTA’s proposal would:

- Provide broadcast television stations with the opportunity to voluntarily extend the time they have to build their permanent post-auction facilities;

---

<sup>1</sup> See *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306, GN Docket No. 12-268, DA 16-1095 (rel. Sept. 30, 2016).

- Provide broadcast television stations with the opportunity to voluntarily sync their post-auction transition with their conversion to ATSC 3.0—all while *expediting* the clearing of 600 MHz spectrum; and
- Provide winning forward auction bidders with the opportunity to obtain early access to 600 MHz spectrum, if they desire.

## **I. INTRODUCTION AND SUMMARY**

The Transition Schedule PN reflects an admirable and thoughtful effort by the Commission’s staff to develop an orderly process to transition broadcasters to their post-auction channel assignments within 39 months of the release of the Channel Reassignment Public Notice. Beneath the FCC’s proposal, however, lies the daunting reality that more than 1,000 television stations are going to need to move to new channels over the three year transition period, including nearly 100 “linked-station sets.” The Commission, broadcasters, and wireless carriers should all be concerned that a delay in the transition of some stations can disrupt the orderly transition process, potentially forcing some stations off the air before their post-auction broadcast facilities are complete or leaving the agency with no choice but to extend the transition deadline, denying wireless carriers and their customers the benefits of a reallocation of spectrum that by then will be almost a decade in the making. On the other hand, if certain stations vacate their channels before their assigned phase completion date, wireless providers can potentially deploy services and take advantage of additional “beachfront” spectrum even before the transition is complete.

To avoid disruption to the transition process and, at the same time, reassure wireless carriers that they will be able to promptly deploy their newly acquired 600 MHz spectrum, the Commission should include in its transition plan a “relief valve” that would allow television

stations to voluntarily continue broadcasting on a shared basis even if their post-auction facilities are not complete. Voluntary transitional channel sharing will provide broadcasters with the opportunity to transition to post-auction channels on a schedule that makes the most sense for each station while accelerating, or at least not disrupting, the 600 MHz transition. There currently are two impediments to voluntary transitional channel sharing: (1) a broadcaster risks losing its license if it does not “transmit broadcast signals for any consecutive 12-month period”<sup>2</sup>; and (2) the Commission has not yet adopted rules permitting channel sharing between stations that did not relinquish their spectrum in the Incentive Auction<sup>3</sup>. Thus, while broadcasters can enter into a channel leasing agreement to achieve similar goals under the current rules, they would risk losing their licenses. Furthermore, under the current PSIP standard, parties engaged in transitional leasing agreements might not be allowed to utilize their virtual channel number on a shared channel.

The Commission can address these issues and facilitate an expedited transition schedule by: (1) permitting any broadcaster assigned to a new channel in the post-auction optimization to enter into a voluntary transitional channel sharing agreement; (2) automatically extending the construction deadline for the post-auction facilities of any station that implements a voluntary temporary channel sharing agreement before its phase completion date; and (3) committing to work with station owners and other interested parties to identify “bottleneck stations” that could expedite the transition by vacating their pre-auction channels in advance of their phase completion date.

---

<sup>2</sup> See 47 U.S.C. § 312(g); 47 C.F.R. §§ 73.1750 & 73.1635.

<sup>3</sup> See *In the Matter of Expanding the Economic & Innovation Opportunities of Spectrum Through Incentive Auctions*, First Order on Reconsideration and Notice of Proposed Rulemaking, 30 FCC Rcd. 6668, 6680-88 ¶¶ 30-56 (2015) (proposing “voluntary and flexible” channel sharing for stations that did not submit winning bids in the Incentive Auction).

## **II. VOLUNTARY TRANSITIONAL CHANNEL SHARING WILL BENEFIT BROADCASTERS AND WIRELESS CARRIERS BY REMOVING BARRIERS TO A PROMPT TRANSITION.**

In committing to complete the post-auction transition in 39 months, the FCC properly recognized the need to balance “a post-incentive auction transition timetable that is flexible for broadcasters and that minimizes disruption to viewers” with providing “certainty to wireless providers.”<sup>4</sup> Nevertheless, in the Transition Schedule PN, the Commission recognized a number of factors that could affect the ability of broadcasters to transition to their post-auction channels, including: “the availability of human capital such as tower crews and RF and structural engineers; manufacturing capacity, especially the ability of antenna manufacturers to meet industry demand; the potential impact of external factors, such as local permitting/zoning and weather; and the degree to which towers will need to be modified in order to comply with new safety standards.”<sup>5</sup> While the FCC has developed a plan to minimize the likelihood that any of these factors will delay the transition, the fact remains that there can be only a limited margin for error in a plan that calls for the transition of more than 1,000 television stations in a 39-month period.

The FCC can better achieve its goals of providing flexibility to broadcasters, minimizing disruption to viewers, and providing certainty to wireless providers by allowing broadcasters to enter into transitional channel sharing agreements. Under the Commission’s existing rules, only broadcasters that successfully relinquish their spectrum in the Incentive Auction and expressed an intent to channel share in their pre-auction applications are permitted to channel after the

---

<sup>4</sup> Transition Schedule PN ¶ 2 (citing *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567, 6797 ¶ 563 (2014) (“Incentive Auction R&O”), *affirmed*, *National Association of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015).

<sup>5</sup> Transition Schedule PN ¶ 3.

auction.<sup>6</sup> The Commission should expand its rules to permit channel sharing by any broadcaster assigned to a new channel in the post-auction optimization.

Expanding upon a phrase from former FCC Chairman Julius Genachowski, voluntary transitional channel sharing is a “win-win-win-win” proposition. First, broadcasters entering into transitional channel sharing agreements “win” by freeing themselves of the pressure of constructing new facilities under tight time conditions and the threat of having to go dark if they cannot complete their facilities in time. This could, for example, allow broadcasters to fully “sync-up” their post-auction transition and their conversion to ATSC 3.0 while expediting, rather than delaying, the 600 MHz transition. Second, broadcasters who are part of a so-called linked-station set “win” by removing uncontrollable barriers to their own transition. Third, wireless carriers “win” by receiving the certainty that the Commission has promised, with the possibility of obtaining faster access to the 600 MHz spectrum they purchased. Fourth, the public “wins” by maintaining uninterrupted free, over-the-air broadcast television service while also more rapidly experiencing the benefits of 600 MHz wireless spectrum.

The Commission should automatically extend the construction deadline beyond 39 months for any station that implements a voluntary temporary channel sharing agreement before its phase completion date. In the Incentive Auction R&O, the FCC contemplated providing stations with additional time to construct their new facilities as long as they cease operations on their pre-auction channels.<sup>7</sup> Providing stations electing to temporarily channel share with additional time to complete their post-auction facilities will allow the industry to focus its resources on stations that must transition during the 39-month transition period. The additional

---

<sup>6</sup> See 47 C.F.R. § 73.3700.

<sup>7</sup> Incentive Auction R&O ¶ 34 (“Stations will be assigned deadlines within that period tailored to their individual circumstances. Stations may request extensions of time to construct their new facilities, but no station will be allowed to continue operating on a reassigned or reallocated channel more than 39 months after the repacking process becomes effective.”); *see also id.* ¶¶ 559-73.

time may also serve as an inducement for stations that desire to delay their transition, such as to launch their post-auction channel with ATSC 3.0. Because transitional channel sharing would be voluntary, meanwhile, it would work in concert with the Commission’s proposed phased transition plan to provide broadcasters with the “flexible” timetable to which the Commission has committed.

### **III. THE COMMISSION SHOULD WORK WITH INTERESTED PARTIES TO IDENTIFY BOTTLENECK STATIONS WHOSE MOVES WOULD EXPEDITE THE TRANSITION.**

One of the most effective ways to expedite the transition and take some of the pressure off of the repacking process is to identify bottleneck stations that, when taken off their pre-auction channels, break up linked-station sets or facilitate the introduction of wireless services in the 600 MHz band. Although no station should be forced to relinquish its pre-auction channel prior to its phase completion date, once bottleneck stations are identified, market forces may intervene to incentivize an early transition.<sup>8</sup>

To efficiently allocate scarce resources, it is critical for station owners and other interested parties to have access to all available tools and data to identify bottleneck stations. The Commission has these tools readily available, and nothing prevents the FCC from sharing this data at any time, but particularly after it releases the Channel Reassignment Public Notice.<sup>9</sup> Given the public interest in an efficient transition and the rapid deployment of 600 MHz wireless

---

<sup>8</sup> See, e.g., *In the Matter of Service Rules for Advanced Wireless Services in the 2000-2020 MHz & 2180-2200 MHz Bands*, Report and Order and Order of Proposed Modification, 27 FCC Rcd. 16102, 16207 ¶ 289 (2012) (recognizing that “new entrants may negotiate with incumbents to gain early entry into the band”); *In the Matter of Service. Rules for the 746-764 & 776-794 MHz Bands, & Revisions to Part 27 of the Commission's Rules*, 15 FCC Rcd. 476, 492 ¶ 37 (2000) (recognizing the need for new licensees to “negotiate accelerated transition agreements with incumbent television licensees”).

<sup>9</sup> Section 6403(a)(3) of the Middle Class Tax Relief and Job Creation Act of 2010 only extends confidentiality to “Commission-held data of a licensee participating in the reverse auction.” Even then, the confidentiality expires upon the release of the Channel Reassignment Public Notice. Although the Commission committed to protect “confidential information pertaining to unsuccessful bids” for an additional two years, see Incentive Auction R&O ¶ 386, nothing in the FCC’s optimization and repacking tools should contain information covered by this rule.

services and the absence of any countervailing interests, the Commission should work with interested parties to make these tools and data available.

#### **IV. CONCLUSION**

Despite the aggressive nature of the FCC's 39-month post-auction transition schedule, the Commission can and must complete the transition in this timeframe. While the Transition Schedule PN provides an excellent framework for an efficient transition, allowing voluntary transitional channel sharing and facilitating the identification of bottleneck stations will ensure the success of the Commission's plan and the prompt realization of the benefits of 600 MHz spectrum.

Respectfully submitted,

By: /s/ Bill Tolpegin /s/  
Bill Tolpegin  
Chief Executive Officer  
OTA Broadcasting, LLC  
3201 Jermantown Rd  
Suite 380  
Fairfax, VA 22030

October 26, 2016